

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

Scott Phillip Flynn,

Defendant.

ORDER

Criminal No. 16-347 ADM/KMM

David J. MacLaughlin and Benjamin F. Langner, Assistant United States Attorneys, United States Attorney's Office, Minneapolis, MN, on behalf of Plaintiff.

Ian M. Comisky, Esq., and Patrick J. Egan, Esq., Fox Rothschild LLP, Philadelphia, PA, on behalf of Defendant.

This matter is before the undersigned United States District Judge for a ruling on Defendant Scott Phillip Flynn's ("Flynn") Motion for Continuance and/or Bifurcation of Sentencing and Restitution Hearing [Docket No. 133] and Plaintiff United States of America's (the "Government") Motion for Evidentiary Hearing [Docket No. 134].

Flynn requests that his sentencing and restitution hearing be continued and asks the Court to set a jury trial as to the amount of restitution to be ordered. Flynn is not entitled to a jury trial on the amount of restitution. United States v. Carruth, 418 F.3d 900, 904 (8th Cir. 2005); 18 U.S.C. § 3664(e) ("Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence.").

The Government requests an evidentiary hearing at sentencing to determine the amount of Flynn's restitution. The Court agrees that an evidentiary hearing is necessary. The Government anticipates a hearing of approximately one hour.

The issues of restitution in this case are familiar to the Court. If the evidence concerning

the restitution becomes more complicated than anticipated, the Court may continue the restitution after sentencing as prescribed by 18 U.S.C. § 3664(d)(5).

The Court permitted Flynn to change counsel at this late stage in the case based in part upon an understanding that the change in counsel would not cause further delays in the case. See Mem. Op. & Order [Docket No. 131] at 4. Seven months have elapsed since Flynn's plea of guilty and more than two years since the Indictment.

Based on the foregoing, as well as all the files, records, and proceedings in this case, IT IS HEREBY ORDERED that:

1. Defendant Scott Phillip Flynn's Motion for Continuance and/or Bifurcation of Sentencing and Restitution Hearing [Docket No. 133] is **DENIED**; and
2. The Government's Motion for Evidentiary Hearing [Docket No. 134] is **GRANTED**.

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: January 17, 2019.